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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DONALD EUGENE RANDONICH,

Petitioner,

vs.

D.K SISTO,

Respondent.

No. C 07-3730 RMW (PR)

ORDER TO SHOW CAUSE

Petitioner, a state prisoner proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has paid the filing fee. The court orders respondent to show cause why a writ of habeas corpus should not be issued.

I. BACKGROUND

A jury in Marin County Superior Court convicted petitioner of one count of Possession of Controlled Substance with Intent to Manufacture (Cal. Health & Safety Code § 11383) and one count of possession of stolen property (Cal. Penal Code § 496(a)). The trial court sentenced him to a term of sixteen years and four months in state prison. The California Court of Appeal affirmed, and the California Supreme Court denied review. Petitioner filed habeas petitions in all three levels of the California courts, and all

three petitions were denied. Thereafter, petitioner filed the instant petition.

II. DISCUSSION

A. Standard of Review

This court may entertain a petition for writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a state court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); Rose v. Hodges, 423 U.S. 19, 21 (1975).

A district court shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

B. Petitioner’s Claims

As his sole grounds for federal habeas relief, petitioner claims that the trial court violated his constitutional rights to a jury trial and to due process by imposing an upper-term sentence. Liberally construed, petitioner’s claim is sufficient to require a response. The court orders respondent to show cause why the petition should not be granted.

III. CONCLUSION

1. The clerk shall serve by mail a copy of this order and the petition and all attachments thereto upon the respondent and the respondent’s attorney, the Attorney General of the State of California. The clerk shall also serve a copy of this order on the petitioner.

2. Respondent shall file with the court and serve on petitioner, within **sixty days** of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted. Respondent shall file with the answer and serve on petitioner a copy of all portions of the underlying state criminal record that have been transcribed previously and that are relevant to a determination of the issues presented by the petition.

If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the court and serving it on respondent within **thirty days** of his receipt of the


1 answer.

2 3. Respondent may file a motion to dismiss on procedural grounds in lieu of
3 an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules
4 Governing Section 2254 Cases within **sixty days** of the issuance of this order. If
5 respondent files such a motion, petitioner shall file with the court and serve on respondent
6 an opposition or statement of non-opposition within **thirty days** of receipt of the motion,
7 and respondent shall file with the court and serve on petitioner a reply within **fifteen days**
8 of receipt of any opposition.

9 4. It is petitioner's responsibility to prosecute this case. Petitioner is reminded
10 that all communications with the court must be served on respondent by mailing a true
11 copy of the document to respondent's counsel. Petitioner must keep the court and all
12 parties informed of any change of address by filing a separate paper captioned "Notice of
13 Change of Address." Petitioner must comply with the court's orders in a timely fashion.
14 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
15 to Federal Rule of Civil Procedure 41(b).

16 IT IS SO ORDERED.

17 Dated: 2/22/08



RONALD M. WHYTE
United States District Judge

1 A copy of this order was mailed on 2/25/08 to the following:

2 Donald Eugene Randonich
3 P-23442
4 California State Prison, Solano
5 P.O. Box 4000
6 Vacaville, CA 95696
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